

Law Office of Robert Ross Fogg

From: Echenberg, Janis (USANYS) [Janis.Echenberg@usdoj.gov]
Sent: Monday, December 15, 2014 12:45 PM
To: Law Office Of Robert Ross Fogg; 'Benjamin, Matthew'; 'Southwell, Alexander H.'
Cc: Wilson, Alexander (USANYS) 3
Subject: [!! SPAM] RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request
Attachments: 20141215123513054.pdf

Just to confirm, is this the email?

Thanks,
Janis

Janis M. Echenberg
Assistant United States Attorney
Southern District of New York
1 Saint Andrew's Plaza
New York, NY 10007
212-637-2597 (tel)
212-637-2620 (fax)

From: Law Office Of Robert Ross Fogg [mailto:rfoogg@rfogglaw.com]
Sent: Monday, December 15, 2014 12:37 PM
To: Echenberg, Janis (USANYS); 'Benjamin, Matthew'; 'Southwell, Alexander H.'
Cc: Wilson, Alexander (USANYS) 3
Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Good afternoon Ms. Echenberg:

The referenced email is the same email that was attached to my October 24th Subpoena Request, a copy of which was provided to you in court.

Unfortunately, I am not in the office right now. But if you are not able to locate it, please let me know so that I can provide another copy to you later this evening.

Robert

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Echenberg, Janis (USANYS)"
Date: 12/15/2014 10:33 AM (GMT-05:00)
To: Law Office of Robert Ross Fogg , "Benjamin, Matthew" , "Southwell, Alexander H."
Cc: "Wilson, Alexander (USANYS) 3"

Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Mr. Fogg,

Can you please identify the email to which you refer in the correspondence below?

Thanks,
Janis

Janis M. Echenberg

Assistant United States Attorney
Southern District of New York
1 Saint Andrew's Plaza
New York, NY 10007
212-637-2597 (tel)
212-637-2620 (fax)

From: Law Office of Robert Ross Fogg [mailto:rfoogl@rfoogl.com]
Sent: Monday, December 15, 2014 7:57 AM
To: 'Benjamin, Matthew'; 'Southwell, Alexander H.'
Cc: Echenberg, Janis (USANYS)
Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Mr. Southwell and Mr. Benjamin:

In response to your email late Friday evening, I have had no trouble accessing the transmitted attachments and acknowledge receipt of the same. I thank you for your response and your offer to continue working with me.

As your November 26, 2014 letter confirms, your firm has been made aware of many of the issues in the criminal proceeding, which undoubtedly presents civil advantage. Nevertheless, as you may know, my concern

is the criminal defense of my client. To that end, any discovery, voluntary or otherwise, had prior to the commencement of the criminal case is irrelevant.

However, I must inform you that through review of the discovery the Government provided to Mr. Patton's office, which was in turn provided to me, I came across an email in which Mr. Zuckerberg refers to a contract he prepared and presented to my client. My client informed me, that particular email was never provided to him in his civil prosecution. What is significant is that the email demonstrates that there existed more than one contract and that your client is in possession of it. What is concerning is that this information has only been revealed in the criminal case, which suggests a withholding of material. As a point of issue, your "voluntary" production to Mr. Patton failed to provide this email and the contract referenced in your client's email. Accordingly, I requested an Order of Subpoena with the email attached and submitted it to the court and the Government personally to preserve confidentiality, a fact of which I'm sure the Government has made you aware.

Gentlemen, I am aware of Mr. Southwell's assessment of my subpoena request as overbroad. However, to date your firm has only produced emails between our clients that were "collected from Mr. Zuckerberg's Harvard University e-mail account." In addition, Mr. Southwell's letter of November 26, 2014 did not attempt to respond to my request under number 1:

"(1) - All written contracts or agreements, whether proposed, contemplated or in draft form, whether signed or not, endorsed or not, executed or not, including copies thereof, in any format, including electronic, paper, email or images thereof, between Mark Zuckerberg and Paul Ceglia or between companies managed or owned, in whole or part, by either Zuckerberg or Ceglia dating from November 2002 through, up to and including July 29, 2004."

To be clear, I would like your firm to provide me with the specific contract referenced in your client's email and all copies thereof, no matter where the contract and its copies may resided and no matter what forms in which they may exist. I am also requesting any and all other contracts between our two clients, whether they are copies, drafts, complete, incomplete and no matter their format or where they reside. In addition, in light of the existence of your client's email to a third party confessing the existence of another contract, I am asking for all emails to and from your client, with their attachments, that relate or make reference to my client or the relationship between our two clients. Please note, that my requests are not limited to those residing at Harvard or associated with a particular project—e.g. StreetFax. Also note, I have restricted my request to a 20 month period, from November 1, 2002 to July 29, 2004.

While I am mindful that your firm has never been held to any discovery obligation—in general and in this case specifically—and that your determination of completion of voluntary discovery is self-servingly subjective, you must forgive me for my skepticism regarding your offer to voluntarily provide these very basic documents, which are central to the issues of the criminal case. As to what is relevant or irrelevant, please allow me, as criminal procedure does, the opportunity to make that determination.

At this point, it would be at best erroneous and at worse misleading to proclaim cooperation or self-imposed compliance. I do not wish to equivocate over phraseology or our respective obligations to our clients. I am in hopes that my impressions of your regard for the honor in our profession have been mistakenly perceived. If so, I offer my apologies in advance. If not, I believe a restructured Subpoena reflecting my requests is reasonable and not overbroad and I must impose upon the Court to make a determination on my subpoena request immediately.

With all collegial respect,

Robert Ross Fogg

Law Office of ROBERT ROSS FOGG, ESQ., LL.M.
Attorney and Counselor at Law
69 Delaware Avenue, Suite 600
Buffalo, New York 14202
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From: Benjamin, Matthew [<mailto:MBenjamin@gibsondunn.com>]
Sent: Friday, December 12, 2014 5:10 PM
To: rfogg@rfogglaw.com
Cc: Southwell, Alexander H.; AUSA Janis Echenberg (Janis.Echenberg@usdoj.gov)
Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Mr. Fogg:

We assume you have not had any trouble accessing the transmitted attachments. Please let us know if you would like to further discuss.

Regards,

Matt

From: Benjamin, Matthew
Sent: Wednesday, November 26, 2014 10:54 AM
To: 'rfogg@rfogglaw.com'
Cc: Southwell, Alexander H.; AUSA Janis Echenberg (Janis.Echenberg@usdoj.gov)
Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Mr. Fogg:

Please see attached correspondence and enclosures from Alex Southwell. Given the file size of the two attachments, please confirm receipt.

Best wishes for a Happy Thanksgiving.

Regards,
Matt

From: Law Office Of Robert Ross Fogg <rfogg@rfogglaw.com>
Date: November 24, 2014, 12:55:31 PM EST
To: "Southwell, Alexander H." <ASouthwell@gibsondunn.com>
Cc: "janis.echenberg@usdoj.gov" <janis.echenberg@usdoj.gov>
Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Mr. Southwell,

What is the status of my requests as written and listed under items 1), 2) and 3) of my November 13, 2014 email?

Please let me know by close of business Wednesday, November 26, 2014.

Thank you.

Robert Ross Fogg

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Southwell, Alexander H."

Date: 11/15/2014 3:59 PM (GMT-05:00)

To: Law Office of Robert Ross Fogg

Cc: janis.echenberg@usdoj.gov

Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Mr. Fogg:

We have received and are reviewing your request. We will respond as soon as possible.

Alex

From: Law Office of Robert Ross Fogg [<mailto:fogg@rfogglaw.com>]

Sent: Thursday, November 13, 2014 8:12 PM

To: Southwell, Alexander H.

Cc: janis.echenberg@usdoj.gov

Subject: RE: US v Ceglia, 1:12-cr-00876-ALC-1- Discovery Request

Dear Mr. Alexander Southwell:

As you may know, I represent Mr. Paul Ceglia on a federal criminal case pending before the Honorable Andrew L. Carter, Jr., District Judge for the Southern District of New York, scheduled to return on November 24, 2014.

As you may recall, on July 22, 2014, at a conference date, Mr. Ceglia's former attorney, David Patton, filed motions for subpoenas for certain material defense believed relevant. As you physically appeared before the Court, of counsel to Gibson Dunn on behalf of Facebook and Mark Zuckerberg, you offered on the record to voluntarily produce discovery material, without the need for a subpoena. In acknowledgment of your cooperation, the Court denied Defense subpoena request without prejudice and held the issue at abeyance instructing the parties to meet and confer.

On or about September 3, 2014, the defense received the information that you believed sufficiently satisfied the subpoena request. I thank you for your compliance; however, I believe the information provided thus far is incomplete.

Therefore, in accordance with the Court's direction please provide the following on or before Tuesday, November 18, 2014, by 5:00 pm:

(1) All written contracts or agreements, whether proposed, contemplated or in draft form, whether signed or not, endorsed or not, executed or not, including copies thereof, in any format, including electronic, paper, email or images thereof, between Mark Zuckerberg and Paul Ceglia or between companies managed or owned, in whole or part, by either Zuckerberg or Ceglia dating from November 2002 through, up to and including

July 29, 2004;

(2) All emails, with attachments in their native format, sent from Mr. Zuckerberg to Mr. Ceglia, and vice versa dating from November 2002 through, up to and including July 2004, wherever the existence of which may be found or reside;

(3) All emails, with attachments in their native format, from and to Mr. Zuckerberg which relate to the above.

Respectfully, I ask that you kindly respond to this email as soon as practicable.

Thank you in advance for your continued voluntary cooperation.

Robert Ross Fogg

Law Office of ROBERT ROSS FOGG, ESQ., LL.M.
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This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.